



January 29, 2016

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## HOUSE BILL No. 1127

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DIGEST OF HB 1127 (Updated January 27, 2016 5:36 pm - DI 101)

**Citations Affected:** IC 4-21.5; IC 24-4.5.

**Synopsis:** Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (CPAP provider) provides to a consumer claimant in a civil proceeding a funded amount, the repayment of which is: (1) required only if the consumer claimant prevails in the civil proceeding; and (2) sourced from the proceeds of the civil proceeding. Provides for the following within the Uniform Consumer Credit Code (UCCC): (1) Allows a CPAP provider to impose, not more than one time with respect to any one CPAP transaction, a charge that does not exceed \$500 for obtaining and preparing documents. (2) Allows a CPAP provider to charge a fee not exceeding 36% per annum in connection with a CPAP transaction, and specifies that other than this annual fee, a deferral charge, and the document fee, a CPAP provider may not assess or collect any other fee or charge in connection with a CPAP transaction. (3) Provides that a CPAP contract must: (A) be in a form and made in a manner approved by the department of financial institutions; and (B) contain a written acknowledgment by the attorney in the consumer claimant's civil proceeding that attests to certain statements. (4) Specifies that provisions in the UCCC concerning the regular schedule of payments and maximum loan term that otherwise apply to supervised loans do not apply to CPAP transactions.

**Effective:** Upon passage.

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### Lehman, Austin, Heaton

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January 7, 2016, read first time and referred to Committee on Financial Institutions.  
January 28, 2016, amended, reported — Do Pass.

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HB 1127—LS 6668/DI 101





January 29, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1127

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section  
4       concerning the following:

5               (1) A safety order under IC 22-8-1.1.

6               (2) Any order that:

7                       (A) imposes a sanction on a person or terminates a legal right,  
8                       duty, privilege, immunity, or other legal interest of a person;

9                       (B) is not described in section 4 or 5 of this chapter or  
10                      IC 4-21.5-4; and

11                      (C) by statute becomes effective without a proceeding under  
12                      this chapter if there is no request for a review of the order  
13                      within a specified period after the order is issued or served.

14               (3) A notice of program reimbursement or equivalent  
15               determination or other notice regarding a hospital's  
16               reimbursement issued by the office of Medicaid policy and  
17               planning or by a contractor of the office of Medicaid policy and

**HB 1127—LS 6668/DI 101**



1 planning regarding a hospital's year end cost settlement.

2 (4) A determination of audit findings or an equivalent  
3 determination by the office of Medicaid policy and planning or by  
4 a contractor of the office of Medicaid policy and planning arising  
5 from a Medicaid postpayment or concurrent audit of a hospital's  
6 Medicaid claims.

7 (5) A license revocation **or suspension** under:

8 (A) IC 24-4.4-2;

9 (B) IC 24-4.5-3;

10 (C) IC 28-1-29;

11 (D) IC 28-7-5;

12 (E) IC 28-8-4; or

13 (F) IC 28-8-5.

14 (6) An order issued by the:

15 (A) division of aging or the bureau of aging services; or

16 (B) division of disability and rehabilitative services or the  
17 bureau of developmental disabilities services;

18 against providers regulated by the division of aging or the bureau  
19 of developmental disabilities services and not licensed by the  
20 state department of health under IC 16-27 or IC 16-28.

21 (b) When an agency issues an order described by subsection (a), the  
22 agency shall give notice to the following persons:

23 (1) Each person to whom the order is specifically directed.

24 (2) Each person to whom a law requires notice to be given.

25 A person who is entitled to notice under this subsection is not a party  
26 to any proceeding resulting from the grant of a petition for review  
27 under section 7 of this chapter unless the person is designated as a  
28 party in the record of the proceeding.

29 (c) The notice must include the following:

30 (1) A brief description of the order.

31 (2) A brief explanation of the available procedures and the time  
32 limit for seeking administrative review of the order under section  
33 7 of this chapter.

34 (3) Any other information required by law.

35 (d) An order described in subsection (a) is effective fifteen (15) days  
36 after the order is served, unless a statute other than this article specifies  
37 a different date or the agency specifies a later date in its order. This  
38 subsection does not preclude an agency from issuing, under  
39 IC 4-21.5-4, an emergency or other temporary order concerning the  
40 subject of an order described in subsection (a).

41 (e) If a petition for review of an order described in subsection (a) is  
42 filed within the period set by section 7 of this chapter and a petition for



1 stay of effectiveness of the order is filed by a party or another person  
 2 who has a pending petition for intervention in the proceeding, an  
 3 administrative law judge shall, as soon as practicable, conduct a  
 4 preliminary hearing to determine whether the order should be stayed in  
 5 whole or in part. The burden of proof in the preliminary hearing is on  
 6 the person seeking the stay. The administrative law judge may stay the  
 7 order in whole or in part. The order concerning the stay may be issued  
 8 after an order described in subsection (a) becomes effective. The  
 9 resulting order concerning the stay shall be served on the parties and  
 10 any person who has a pending petition for intervention in the  
 11 proceeding. It must include a statement of the facts and law on which  
 12 it is based.

13 SECTION 2. IC 24-4.5-1-301.5, AS AMENDED BY P.L. 137-2014,  
 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 UPON PASSAGE]: Sec. 301.5. In addition to definitions appearing in  
 16 subsequent chapters in this article, the following definitions apply  
 17 throughout this article:

18 (1) "Affiliate", with respect to any person subject to this article,  
 19 means a person that, directly or indirectly, through one (1) or more  
 20 intermediaries:

- 21 (a) controls;
- 22 (b) is controlled by; or
- 23 (c) is under common control with;

24 the person subject to this article.

25 (2) "Agreement" means the bargain of the parties in fact as found in  
 26 their language or by implication from other circumstances, including  
 27 course of dealing or usage of trade or course of performance.

28 (3) "Agricultural purpose" means a purpose related to the  
 29 production, harvest, exhibition, marketing, transportation, processing,  
 30 or manufacture of agricultural products by a natural person who  
 31 cultivates, plants, propagates, or nurtures the agricultural products.  
 32 "Agricultural products" includes agricultural, horticultural, viticultural,  
 33 and dairy products, livestock, wildlife, poultry, bees, forest products,  
 34 fish and shellfish, and any and all products raised or produced on farms  
 35 and any processed or manufactured products thereof.

36 (4) "Average daily balance" means the sum of each of the daily  
 37 balances in a billing cycle divided by the number of days in the billing  
 38 cycle, and if the billing cycle is a month, the creditor may elect to treat  
 39 the number of days in each billing cycle as thirty (30).

40 (5) "Closing costs" with respect to a subordinate lien mortgage  
 41 transaction includes:

- 42 (a) fees or premiums for title examination, title insurance, or



1 similar purposes, including surveys;

2 (b) fees for preparation of a deed, settlement statement, or other  
3 documents;

4 (c) escrows for future payments of taxes and insurance;

5 (d) fees for notarizing deeds and other documents;

6 (e) appraisal fees; and

7 (f) fees for credit reports.

8 (6) "Conspicuous" refers to a term or clause when it is so written  
9 that a reasonable person against whom it is to operate ought to have  
10 noticed it.

11 (7) "Consumer credit" means credit offered or extended to a  
12 consumer primarily for a personal, family, or household purpose.

13 (8) "Consumer credit sale" is a sale of goods, services, or an interest  
14 in land in which:

15 (a) credit is granted by a person who regularly engages as a seller  
16 in credit transactions of the same kind;

17 (b) the buyer is a person other than an organization;

18 (c) the goods, services, or interest in land are purchased primarily  
19 for a personal, family, or household purpose;

20 (d) either the debt is payable in installments or a credit service  
21 charge is made; and

22 (e) with respect to a sale of goods or services, either:

23 (i) the amount of credit extended, the written credit limit, or  
24 the initial advance does not exceed fifty-three thousand five  
25 hundred dollars (\$53,500) or another amount as adjusted in  
26 accordance with the annual adjustment of the exempt  
27 threshold amount specified in Regulation Z (12 CFR 226.3  
28 or 12 CFR 1026.3(b), as applicable); or

29 (ii) the debt is secured by personal property used or expected  
30 to be used as the principal dwelling of the buyer.

31 Unless the sale is made subject to this article by agreement  
32 (IC 24-4.5-2-601), "consumer credit sale" does not include a sale  
33 in which the seller allows the buyer to purchase goods or services  
34 pursuant to a lender credit card or similar arrangement or except  
35 as provided with respect to disclosure (IC 24-4.5-2-301), debtors'  
36 remedies (IC 24-4.5-5-201), providing payoff amounts  
37 (IC 24-4.5-2-209), and powers and functions of the department  
38 (IC 24-4.5-6) a sale of an interest in land which is a first lien  
39 mortgage transaction.

40 (9) "Consumer loan" means a loan made by a person regularly  
41 engaged in the business of making loans in which:

42 (a) the debtor is a person other than an organization;



(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$53,500) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

(a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and

(b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

(a) condominium unit;

(b) cooperative unit;

(c) mobile home; or

(d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or



1 retirement program.

2 (16) "Employee" means an individual who is paid wages or other  
3 compensation by an employer required under federal income tax law  
4 to file Form W-2 on behalf of the individual.

5 (17) "Federal banking agencies" means the Board of Governors of  
6 the Federal Reserve System, the Office of the Comptroller of the  
7 Currency, the Office of Thrift Supervision, the National Credit Union  
8 Administration, and the Federal Deposit Insurance Corporation.

9 (18) "First lien mortgage transaction" means:

10 (a) a consumer loan; or

11 (b) a consumer credit sale;

12 that is or will be used by the debtor primarily for personal, family, or  
13 household purposes and that is secured by a mortgage or a land  
14 contract (or another consensual security interest equivalent to a  
15 mortgage or a land contract) that constitutes a first lien on a dwelling  
16 or on residential real estate upon which a dwelling is constructed or  
17 intended to be constructed.

18 (19) "Immediate family member" means a spouse, child, sibling,  
19 parent, grandparent, or grandchild. The term includes stepparents,  
20 stepchildren, stepsiblings, and adoptive relationships.

21 (20) "Individual" means a natural person.

22 (21) "Lender credit card or similar arrangement" means an  
23 arrangement or loan agreement, other than a seller credit card, pursuant  
24 to which a lender gives a debtor the privilege of using a credit card,  
25 letter of credit, or other credit confirmation or identification in  
26 transactions out of which debt arises:

27 (a) by the lender's honoring a draft or similar order for the  
28 payment of money drawn or accepted by the debtor;

29 (b) by the lender's payment or agreement to pay the debtor's  
30 obligations; or

31 (c) by the lender's purchase from the obligee of the debtor's  
32 obligations.

33 (22) "Licensee" means a person licensed as a creditor under this  
34 article.

35 (23) "Loan brokerage business" means any activity in which a  
36 person, in return for any consideration from any source, procures,  
37 attempts to procure, or assists in procuring, a mortgage transaction  
38 from a third party or any other person, whether or not the person  
39 seeking the mortgage transaction actually obtains the mortgage  
40 transaction.

41 (24) "Loan processor or underwriter" means an individual who  
42 performs clerical or support duties as an employee at the direction of,



and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) another mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).



(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(27) "Mortgage transaction" means:

(a) a consumer loan; or

(b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(28) "Nationwide Mortgage Licensing System and Registry", or "NMLSR", means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, or sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the



individual's spouse; and

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(35) "Person related to" with respect to an organization means:

(a) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and



- 1 (b) is registered with, and maintains a unique identifier through,  
 2 the NMLSR.
- 3 (39) "Regularly engaged", with respect to a person who extends  
 4 consumer credit, refers to a person who:
- 5 (a) extended consumer credit:
- 6 (i) more than twenty-five (25) times; or  
 7 (ii) more than five (5) times for a mortgage transaction secured  
 8 by a dwelling;  
 9 in the preceding calendar year; or
- 10 (b) extends or will extend consumer credit:
- 11 (i) more than twenty-five (25) times; or  
 12 (ii) more than five (5) times for a mortgage transaction secured  
 13 by a dwelling;  
 14 in the current calendar year, if the person did not meet the  
 15 numerical standards described in subdivision (a) in the preceding  
 16 calendar year.
- 17 (40) "Residential real estate" means any real property that is located  
 18 in Indiana and on which there is located or intended to be constructed  
 19 a dwelling.
- 20 (41) "Seller credit card" means an arrangement that gives to a buyer  
 21 or lessee the privilege of using a credit card, letter of credit, or other  
 22 credit confirmation or identification for the purpose of purchasing or  
 23 leasing goods or services from that person, a person related to that  
 24 person, or from that person and any other person. The term includes a  
 25 card that is issued by a person, that is in the name of the seller, and that  
 26 can be used by the buyer or lessee only for purchases or leases at  
 27 locations of the named seller.
- 28 (42) "Subordinate lien mortgage transaction" means:
- 29 (a) a consumer loan; or  
 30 (b) a consumer credit sale;  
 31 that is or will be used by the debtor primarily for personal, family, or  
 32 household purposes and that is secured by a mortgage or a land  
 33 contract (or another consensual security interest equivalent to a  
 34 mortgage or a land contract) that constitutes a subordinate lien on a  
 35 dwelling or on residential real estate upon which a dwelling is  
 36 constructed or intended to be constructed.
- 37 (43) "Unique identifier" means a number or other identifier assigned  
 38 by protocols established by the NMLSR.
- 39 (44) "Land contract" means a contract for the sale of real estate in  
 40 which the seller of the real estate retains legal title to the real estate  
 41 until the total contract price is paid by the buyer.
- 42 (45) "Bona fide nonprofit organization" means an organization that



1 does the following, as determined by the director under criteria  
2 established by the director:

3 (a) Maintains tax exempt status under Section 501(c)(3) of the  
4 Internal Revenue Code.

5 (b) Promotes affordable housing or provides home ownership  
6 education or similar services.

7 (c) Conducts the organization's activities in a manner that serves  
8 public or charitable purposes.

9 (d) Receives funding and revenue and charges fees in a manner  
10 that does not encourage the organization or the organization's  
11 employees to act other than in the best interests of the  
12 organization's clients.

13 (e) Compensates the organization's employees in a manner that  
14 does not encourage employees to act other than in the best  
15 interests of the organization's clients.

16 (f) Provides to, or identifies for, debtors mortgage transactions  
17 with terms that are favorable to the debtor (as described in section  
18 202(b)(15) of this chapter) and comparable to mortgage  
19 transactions and housing assistance provided under government  
20 housing assistance programs.

21 (g) Maintains certification by the United States Department of  
22 Housing and Urban Development or employs counselors who are  
23 certified by the Indiana housing and community development  
24 authority.

25 **(46) "Civil proceeding advance payment transaction", or**  
26 **"CPAP transaction", has the meaning set forth in IC 24-4.5-3-110.**

27 **(47) "Civil proceeding", with respect to a CPAP transaction, has**  
28 **the meaning set forth in IC 24-4.5-3-110.5.**

29 **(48) "Civil proceeding advance payment contract", or "CPAP**  
30 **contract", has the meaning set forth in IC 24-4.5-3-110.5.**

31 **(49) "Civil proceeding advance payment provider", or "CPAP**  
32 **provider", has the meaning set forth in IC 24-4.5-3-110.5.**

33 **(50) "Consumer claimant", with respect to a CPAP transaction,**  
34 **has the meaning set forth in IC 24-4.5-3-110.5.**

35 **(51) "Funded amount", with respect to a CPAP transaction, has**  
36 **the meaning set forth in IC 24-4.5-3-110.5.**

37 SECTION 3. IC 24-4.5-3-110 IS ADDED TO THE INDIANA  
38 CODE AS A NEW SECTION TO READ AS FOLLOWS  
39 [EFFECTIVE UPON PASSAGE]: Sec. 110. (1) "Civil proceeding  
40 advance payment transaction", or "CPAP transaction", means a  
41 nonrecourse loan transaction in which a CPAP provider as  
42 creditor provides a funded amount to a consumer claimant to use



1 for any purpose other than prosecuting the consumer claimant's  
2 civil proceeding, if the repayment of the funded amount is:

- 3 (a) required only if the consumer claimant prevails in the civil  
4 proceeding; and  
5 (b) sourced from the proceeds of the civil proceeding, whether  
6 the proceeds result from a judgment, a settlement, or some  
7 other resolution.

8 (2) The term includes a transaction:

9 (a) that is termed or described as:

10 (i) a purchase;

11 (ii) an assignment of an interest in a consumer claimant's  
12 civil proceeding, or in the proceeds of a consumer  
13 claimant's civil proceeding; or

14 by the CPAP provider; or

15 (b) with respect to which the CPAP provider sets forth in a  
16 CPAP contract, an agreement by:

17 (i) the CPAP provider to purchase from the consumer  
18 claimant; or

19 (ii) the consumer claimant to assign to the CPAP provider;  
20 a contingent right to receive a share of the potential proceeds  
21 of the consumer claimant's civil proceeding, whether the  
22 proceeds result from a judgment, a settlement, or some other  
23 resolution.

24 SECTION 4. IC 24-4.5-3-110.5 IS ADDED TO THE INDIANA  
25 CODE AS A NEW SECTION TO READ AS FOLLOWS  
26 [EFFECTIVE UPON PASSAGE]: Sec. 110.5. (1) "Civil proceeding",  
27 with respect to a CPAP transaction, means:

28 (a) a civil action;

29 (b) a mediation, an arbitration, or any other alternative  
30 dispute resolution proceeding; or

31 (c) an administrative proceeding before:

32 (i) an agency or instrumentality of the state; or

33 (ii) a political subdivision, or an agency or instrumentality  
34 of a political subdivision, of the state;

35 that is filed in, or is under the jurisdiction of, a court with  
36 jurisdiction in Indiana, a tribunal in Indiana, or an agency or  
37 instrumentality described in subdivision (c) in Indiana. The term  
38 includes all proceedings arising out of or relating to the  
39 proceeding, including any proceedings on appeal or remand, and  
40 any enforcement, ancillary, or parallel proceedings.

41 (2) "Civil proceeding advance payment contract", or "CPAP  
42 contract", means a contract for a CPAP transaction that a CPAP



1 provider enters into, or offers to enter into, with a consumer  
2 claimant.

3 (3) "Civil proceeding advance payment provider", or "CPAP  
4 provider", means a person that, as a creditor:

5 (a) enters into, or offers to enter into, a CPAP transaction  
6 with a consumer claimant in connection with a civil  
7 proceeding; and

8 (b) is licensed with, or is required to be licensed with, the  
9 department under this chapter.

10 (4) "Consumer claimant" means an individual:

11 (a) who is or may become a plaintiff, a claimant, or a  
12 demandant in a civil proceeding; and

13 (b) who:

14 (i) is offered a CPAP transaction by a CPAP provider; or

15 (ii) enters into a CPAP transaction with a CPAP provider;

16 regardless of whether the individual is a resident of Indiana.

17 (5) "Funded amount", with respect to a CPAP transaction,  
18 means the amount of money:

19 (a) that is provided to the consumer claimant by the CPAP  
20 provider; and

21 (b) the repayment of which is:

22 (i) required only if the consumer claimant prevails in the  
23 consumer claimant's civil proceeding; and

24 (ii) sourced from the proceeds of the civil proceeding,  
25 whether the proceeds result from a judgment, a settlement,  
26 or some other resolution;

27 regardless of the term used by the CPAP provider in the CPAP  
28 contract to identify the amount.

29 SECTION 5. IC 24-4.5-3-202, AS AMENDED BY P.L.217-2007,  
30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 UPON PASSAGE]: Sec. 202. (1) In addition to the loan finance charge  
32 permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may  
33 contract for and receive the following additional charges in connection  
34 with a consumer loan:

35 (a) Official fees and taxes.

36 (b) Charges for insurance as described in subsection (2).

37 (c) Annual participation fees assessed in connection with a  
38 revolving loan account. Annual participation fees must:

39 (i) be reasonable in amount;

40 (ii) bear a reasonable relationship to the lender's costs to  
41 maintain and monitor the loan account; and

42 (iii) not be assessed for the purpose of circumvention or



- 1 evasion of this article, as determined by the department.
- 2 (d) With respect to a debt secured by an interest in land, the
- 3 following closing costs, if they are bona fide, reasonable in
- 4 amount, and not for the purpose of circumvention or evasion of
- 5 this article:
- 6 (i) Fees for title examination, abstract of title, title insurance,
- 7 property surveys, or similar purposes.
- 8 (ii) Fees for preparing deeds, mortgages, and reconveyance,
- 9 settlement, and similar documents.
- 10 (iii) Notary and credit report fees.
- 11 (iv) Amounts required to be paid into escrow or trustee
- 12 accounts if the amounts would not otherwise be included in
- 13 the loan finance charge.
- 14 (v) Appraisal fees.
- 15 (e) Notwithstanding provisions of the Federal Consumer Credit
- 16 Protection Act concerning disclosure, charges for other benefits,
- 17 including insurance, conferred on the debtor, if the benefits are of
- 18 value to the debtor and if the charges are reasonable in relation to
- 19 the benefits, and are excluded as permissible additional charges
- 20 from the loan finance charge. With respect to any other additional
- 21 charge not specifically provided for in this section to be a
- 22 permitted charge under this subsection, the creditor must submit
- 23 a written explanation of the charge to the department indicating
- 24 how the charge would be assessed and the value or benefit to the
- 25 debtor. Supporting documents may be required by the department.
- 26 The department shall determine whether the charge would be of
- 27 benefit to the debtor and is reasonable in relation to the benefits.
- 28 (f) A charge not to exceed twenty-five dollars (\$25) for each
- 29 return by a bank or other depository institution of a dishonored
- 30 check, negotiable order of withdrawal, or share draft issued by the
- 31 debtor.
- 32 (g) With respect to a revolving loan account, a fee not to exceed
- 33 twenty-five dollars (\$25) in each billing cycle during which the
- 34 balance due under the revolving loan account exceeds by more
- 35 than one hundred dollars (\$100) the maximum credit limit for the
- 36 account established by the lender.
- 37 (h) With respect to a revolving loan account, a transaction fee that
- 38 may not exceed the lesser of the following:
- 39 (i) Two percent (2%) of the amount of the transaction.
- 40 (ii) Ten dollars (\$10).
- 41 **(i) This subdivision applies to a CPAP transaction offered or**
- 42 **entered into after June 30, 2016. With respect to a CPAP**



1 transaction, a CPAP provider may impose, not more than one  
 2 (1) time with respect to any one (1) CPAP transaction, a  
 3 charge that does not exceed five hundred dollars (\$500) for  
 4 obtaining and preparing documents. A charge made or  
 5 collected under this section does not constitute interest and is  
 6 not a rate under IC 35-45-7-1. Except for a fee at the rate set  
 7 forth in section 508(2)(a)(i) of this chapter, without regard to  
 8 the amount of the CPAP transaction or the use of the  
 9 actuarial method of calculation, the charge set forth in section  
 10 204 of this chapter, and the charge set forth in this  
 11 subdivision, a CPAP provider may not assess to, or collect  
 12 from, the consumer claimant any other fee or charge in  
 13 connection with a CPAP transaction.

14 The additional charges provided for in subdivisions (f), (g), and (h),  
 15 and (i) are not subject to refund or rebate.

16 (2) An additional charge may be made for insurance in connection  
 17 with the loan, other than insurance protecting the lender against the  
 18 debtor's default or other credit loss:

19 (a) with respect to insurance against loss of or damage to property  
 20 or against liability, if the lender furnishes a clear and specific  
 21 statement in writing to the debtor, setting forth the cost of the  
 22 insurance if obtained from or through the lender and stating that  
 23 the debtor may choose the person, subject to the lender's  
 24 reasonable approval, through whom the insurance is to be  
 25 obtained; and

26 (b) with respect to consumer credit insurance providing life,  
 27 accident, unemployment or other loss of income, or health  
 28 coverage, if the insurance coverage is not a factor in the approval  
 29 by the lender of the extension of credit and this fact is clearly  
 30 disclosed in writing to the debtor, and if, in order to obtain the  
 31 insurance in connection with the extension of credit, the debtor  
 32 gives specific affirmative written indication of the desire to do so  
 33 after written disclosure of the cost of the insurance.

34 SECTION 6. IC 24-4.5-3-502, AS AMENDED BY P.L.186-2015,  
 35 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 UPON PASSAGE]: Sec. 502. (1) A person that is a:

- 37 (a) depository institution;
- 38 (b) subsidiary that is owned and controlled by a depository
- 39 institution and regulated by a federal banking agency; or
- 40 (c) credit union service organization;

41 may engage in Indiana in the making of consumer loans (including  
 42 small loans that are subject to IC 24-4.5-7) that are not mortgage



1 transactions without obtaining a license under this article.

2 (2) A collection agency licensed under IC 25-11-1 may engage in:

3 (a) taking assignments of consumer loans (including small loans  
4 that are subject to IC 24-4.5-7) that are not mortgage transactions;  
5 and

6 (b) undertaking the direct collection of payments from or the  
7 enforcement of rights against debtors arising from consumer loans  
8 (including small loans that are subject to IC 24-4.5-7) that are not  
9 mortgage transactions;

10 in Indiana without obtaining a license under this article.

11 (3) A person that does not qualify under subsection (1) or (2) shall  
12 acquire and retain a license under this chapter in order to regularly  
13 engage in Indiana in the following actions with respect to consumer  
14 loans that are not small loans (as defined in IC 24-4.5-7-104) or  
15 mortgage transactions:

16 (a) The making of consumer loans.

17 (b) Taking assignments of consumer loans.

18 (c) Undertaking the direct collection of payments from or the  
19 enforcement of rights against debtors arising from consumer  
20 loans.

21 (4) A separate license under this chapter is required for each legal  
22 entity that engages in Indiana in any activity described in subsection  
23 (3). However, a separate license under this chapter is not required for  
24 each branch of a legal entity licensed under this chapter to perform an  
25 activity described in subsection (3).

26 (5) Except as otherwise provided in subsections (1) and (2), a  
27 separate license under IC 24-4.5-7 is required in order to regularly  
28 engage in Indiana in the following actions with respect to small loans  
29 (as defined in IC 24-4.5-7-104):

30 (a) The making of small loans (as defined in IC 24-4.5-7-104).

31 (b) Taking assignments of small loans (as defined in  
32 IC 24-4.5-7-104).

33 (c) Undertaking the direct collection of payments from or the  
34 enforcement of rights against debtors arising from small loans (as  
35 defined in IC 24-4.5-7-104).

36 A person that seeks licensure under IC 24-4.5-7 in order to regularly  
37 engage in Indiana in the actions set forth in this subsection shall apply  
38 to the department for that license in the form and manner prescribed by  
39 the department, and is subject to the same licensure requirements and  
40 procedures as an applicant for a license to make consumer loans (other  
41 than small loans or mortgage transactions) under this section.

42 **(6) The following apply with respect to a CPAP transaction that**



1 is offered or entered into after June 30, 2016:

2 (a) Subject to subdivision (b), a CPAP contract must be in a  
3 form and made in a manner approved by the department.

4 (b) If the consumer claimant is represented by an attorney in  
5 the civil proceeding on which a CPAP transaction is based,  
6 the CPAP contract must contain a written acknowledgment  
7 by the attorney that attests to the following:

8 (i) That to the best of the attorney's knowledge, all costs  
9 and charges relating to the CPAP transaction have been  
10 disclosed to the consumer claimant.

11 (ii) That the attorney is being paid by the consumer  
12 claimant on a contingency basis under a written fee  
13 agreement.

14 (iii) That all proceeds of the civil proceeding will be  
15 disbursed through a trust account of the attorney, or  
16 through a settlement fund established to receive the  
17 proceeds of the civil proceeding on behalf of the consumer  
18 claimant.

19 (iv) That the attorney is following the instructions of the  
20 consumer claimant with respect to the CPAP transaction.

21 (v) That the attorney has not received a referral fee or  
22 other consideration from the CPAP provider, and agrees  
23 not to receive a referral fee or other consideration from the  
24 CPAP provider at any time, in connection with the CPAP  
25 transaction.

26 If the attorney retained by the consumer claimant in the  
27 consumer claimant's civil proceeding does not complete the  
28 acknowledgment required by this subdivision, the CPAP  
29 contract, and the CPAP transaction to which it pertains, are  
30 void. However, the CPAP contract, and the CPAP transaction  
31 to which it pertains, remain valid and enforceable if the  
32 consumer claimant or the attorney terminates the  
33 representation.

34 SECTION 7. IC 24-4.5-3-511, AS AMENDED BY P.L.186-2015,  
35 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
36 UPON PASSAGE]: Sec. 511. Regular Schedule of Payments;  
37 Maximum Loan Term — (1) **This section does not apply to a CPAP**  
38 **transaction.**

39 (2) Supervised loans not made pursuant to a revolving loan account  
40 and in which the principal is four thousand dollars (\$4,000) or less are  
41 payable in a single instalment or shall be scheduled to be payable in  
42 substantially equal instalments that are payable at equal periodic



1 intervals, except to the extent that the schedule of payments is adjusted  
 2 to the seasonal or irregular income of the debtor, and:

3 (a) over a period of not more than thirty-seven (37) months if the  
 4 principal is more than three hundred dollars (\$300); or

5 (b) over a period of not more than twenty-five (25) months if the  
 6 principal is three hundred dollars (\$300) or less.

7 ~~(2)~~ (3) The amounts of three hundred dollars (\$300) and four  
 8 thousand dollars (\$4,000) in subsection ~~(1)~~ (2) are subject to change  
 9 pursuant to the provisions on adjustment of dollar amounts  
 10 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the  
 11 Reference Base Index to be used with respect to the amount of:

12 ~~(1)~~ (a) three hundred dollars (\$300) is the Index for October  
 13 1992; and

14 ~~(2)~~ (b) four thousand dollars (\$4,000) is the Index for October  
 15 2012.

16 SECTION 8. **An emergency is declared for this act.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1127, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 21 through 22.

Page 3, delete lines 15 through 42, begin a new paragraph and insert:

"SECTION 2. IC 24-4.5-1-301.5, AS AMENDED BY P.L.137-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 301.5. In addition to definitions appearing in subsequent chapters in this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(4) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(5) "Closing costs" with respect to a subordinate lien mortgage transaction includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;



- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) fees for credit reports.

(6) "Conspicuous" refers to a term or clause when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(7) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(8) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and
- (e) with respect to a sale of goods or services, either:
  - (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$53,500) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
  - (ii) the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement or except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6) a sale of an interest in land which is a first lien mortgage transaction.

(9) "Consumer loan" means a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance



charge is made; and

(d) either:

- (i) the amount of credit extended, the written credit limit, or the initial advance does not exceed fifty-three thousand five hundred dollars (\$53,500) or another amount as adjusted in accordance with the annual adjustment of the exempt threshold amount specified in Regulation Z (12 CFR 226.3 or 12 CFR 1026.3(b), as applicable); or
- (ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

Except as described in IC 24-4.5-3-105, the term does not include a first lien mortgage transaction.

(10) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(11) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(12) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(13) "Director" means the director of the department of financial institutions or the director's designee.

(14) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(15) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(16) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law



to file Form W-2 on behalf of the individual.

(17) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) "First lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a first lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(19) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) "Individual" means a natural person.

(21) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(22) "Licensee" means a person licensed as a creditor under this article.

(23) "Loan brokerage business" means any activity in which a person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring, a mortgage transaction from a third party or any other person, whether or not the person seeking the mortgage transaction actually obtains the mortgage transaction.

(24) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subsection, the term "clerical or support duties" may include, after the



receipt of an application, the following:

- (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.
- (b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:
  - (i) offering or negotiating loan rates or terms; or
  - (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(25) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, regularly engages in taking a mortgage transaction application or in offering or negotiating the terms of a mortgage transaction that either is made under this article or under IC 24-4.4 or is made by an employee of a person licensed or exempt from licensing under this article or under IC 24-4.4, while the employee is engaging in the loan brokerage business. The term does not include the following:

- (a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under this article.
- (b) Unless the person or entity is compensated by:
  - (i) a creditor;
  - (ii) a loan broker;
  - (iii) another mortgage loan originator; or
  - (iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

- (c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(26) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.



(27) "Mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(28) "Nationwide Mortgage Licensing System and Registry", or "NMLSR", means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.

(29) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

(30) "Official fees" means:

- (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
- (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) that would otherwise be payable.

(31) "Organization" means a corporation, a government or governmental subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.

(32) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(33) "Person" includes an individual or an organization.

(34) "Person related to" with respect to an individual means:

- (a) the spouse of the individual;
- (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the



individual.

(35) "Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) a director, an executive officer, or a manager of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

- (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
- (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
- (c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
- (d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
- (e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(38) "Registered mortgage loan originator" means any individual who:

- (a) meets the definition of mortgage loan originator and is an employee of:
  - (i) a depository institution;
  - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
  - (iii) an institution regulated by the Farm Credit Administration; and
- (b) is registered with, and maintains a unique identifier through, the NMLSR.

(39) "Regularly engaged", with respect to a person who extends



consumer credit, refers to a person who:

- (a) extended consumer credit:
  - (i) more than twenty-five (25) times; or
  - (ii) more than five (5) times for a mortgage transaction secured by a dwelling;
 in the preceding calendar year; or
- (b) extends or will extend consumer credit:
  - (i) more than twenty-five (25) times; or
  - (ii) more than five (5) times for a mortgage transaction secured by a dwelling;
 in the current calendar year, if the person did not meet the numerical standards described in subdivision (a) in the preceding calendar year.

(40) "Residential real estate" means any real property that is located in Indiana and on which there is located or intended to be constructed a dwelling.

(41) "Seller credit card" means an arrangement that gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(42) "Subordinate lien mortgage transaction" means:

- (a) a consumer loan; or
- (b) a consumer credit sale;

that is or will be used by the debtor primarily for personal, family, or household purposes and that is secured by a mortgage or a land contract (or another consensual security interest equivalent to a mortgage or a land contract) that constitutes a subordinate lien on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.

(43) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(44) "Land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer.

(45) "Bona fide nonprofit organization" means an organization that does the following, as determined by the director under criteria established by the director:

- (a) Maintains tax exempt status under Section 501(c)(3) of the



Internal Revenue Code.

(b) Promotes affordable housing or provides home ownership education or similar services.

(c) Conducts the organization's activities in a manner that serves public or charitable purposes.

(d) Receives funding and revenue and charges fees in a manner that does not encourage the organization or the organization's employees to act other than in the best interests of the organization's clients.

(e) Compensates the organization's employees in a manner that does not encourage employees to act other than in the best interests of the organization's clients.

(f) Provides to, or identifies for, debtors mortgage transactions with terms that are favorable to the debtor (as described in section 202(b)(15) of this chapter) and comparable to mortgage transactions and housing assistance provided under government housing assistance programs.

(g) Maintains certification by the United States Department of Housing and Urban Development or employs counselors who are certified by the Indiana housing and community development authority.

**(46) "Civil proceeding advance payment transaction", or "CPAP transaction", has the meaning set forth in IC 24-4.5-3-110.**

**(47) "Civil proceeding", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.**

**(48) "Civil proceeding advance payment contract", or "CPAP contract", has the meaning set forth in IC 24-4.5-3-110.5.**

**(49) "Civil proceeding advance payment provider", or "CPAP provider", has the meaning set forth in IC 24-4.5-3-110.5.**

**(50) "Consumer claimant", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.**

**(51) "Funded amount", with respect to a CPAP transaction, has the meaning set forth in IC 24-4.5-3-110.5.**

SECTION 3. IC 24-4.5-3-110 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 110. (1) "Civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse loan transaction in which a CPAP provider as creditor provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

(a) required only if the consumer claimant prevails in the civil



proceeding; and

(b) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(2) The term includes a transaction:

(a) that is termed or described as:

(i) a purchase;

(ii) an assignment of an interest in a consumer claimant's civil proceeding, or in the proceeds of a consumer claimant's civil proceeding; or

by the CPAP provider; or

(b) with respect to which the CPAP provider sets forth in a CPAP contract, an agreement by:

(i) the CPAP provider to purchase from the consumer claimant; or

(ii) the consumer claimant to assign to the CPAP provider; a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

SECTION 4. IC 24-4.5-3-110.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 110.5. (1) "Civil proceeding", with respect to a CPAP transaction, means:

(a) a civil action;

(b) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or

(c) an administrative proceeding before:

(i) an agency or instrumentality of the state; or

(ii) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;

that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or instrumentality described in subdivision (c) in Indiana. The term includes all proceedings arising out of or relating to the proceeding, including any proceedings on appeal or remand, and any enforcement, ancillary, or parallel proceedings.

(2) "Civil proceeding advance payment contract", or "CPAP contract", means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.

(3) "Civil proceeding advance payment provider", or "CPAP



**provider", means a person that, as a creditor:**

- (a) enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding; and**
- (b) is licensed with, or is required to be licensed with, the department under this chapter.**

**(4) "Consumer claimant" means an individual:**

- (a) who is or may become a plaintiff, a claimant, or a demandant in a civil proceeding; and**
- (b) who:**

- (i) is offered a CPAP transaction by a CPAP provider; or**
- (ii) enters into a CPAP transaction with a CPAP provider;**

**regardless of whether the individual is a resident of Indiana.**

**(5) "Funded amount", with respect to a CPAP transaction, means the amount of money:**

- (a) that is provided to the consumer claimant by the CPAP provider; and**
- (b) the repayment of which is:**
  - (i) required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and**
  - (ii) sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;**

**regardless of the term used by the CPAP provider in the CPAP contract to identify the amount.**

SECTION 5. IC 24-4.5-3-202, AS AMENDED BY P.L.217-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5-3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

- (a) Official fees and taxes.**
- (b) Charges for insurance as described in subsection (2).**
- (c) Annual participation fees assessed in connection with a revolving loan account. Annual participation fees must:**
  - (i) be reasonable in amount;**
  - (ii) bear a reasonable relationship to the lender's costs to maintain and monitor the loan account; and**
  - (iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.**
- (d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in**



amount, and not for the purpose of circumvention or evasion of this article:

- (i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.
- (ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.
- (iii) Notary and credit report fees.
- (iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.
- (v) Appraisal fees.
- (e) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to the debtor and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.
- (f) A charge not to exceed twenty-five dollars (\$25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.
- (g) With respect to a revolving loan account, a fee not to exceed twenty-five dollars (\$25) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars (\$100) the maximum credit limit for the account established by the lender.
- (h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:
  - (i) Two percent (2%) of the amount of the transaction.
  - (ii) Ten dollars (\$10).
- (i) This subdivision applies to a CPAP transaction offered or entered into after June 30, 2016. With respect to a CPAP transaction, a CPAP provider may impose, not more than one (1) time with respect to any one (1) CPAP transaction, a charge that does not exceed five hundred dollars (\$500) for**



**obtaining and preparing documents. A charge made or collected under this section does not constitute interest and is not a rate under IC 35-45-7-1. Except for a fee at the rate set forth in section 508(2)(a)(i) of this chapter, without regard to the amount of the CPAP transaction or the use of the actuarial method of calculation, the charge set forth in section 204 of this chapter, and the charge set forth in this subdivision, a CPAP provider may not assess to, or collect from, the consumer claimant any other fee or charge in connection with a CPAP transaction.**

The additional charges provided for in subdivisions (f), (g), ~~and~~ (h), **and (i)** are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

- (a) with respect to insurance against loss of or damage to property or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and
- (b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

SECTION 6. IC 24-4.5-3-502, AS AMENDED BY P.L.186-2015, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 502. (1) A person that is a:

- (a) depository institution;
- (b) subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
- (c) credit union service organization;

may engage in Indiana in the making of consumer loans (including small loans that are subject to IC 24-4.5-7) that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

- (a) taking assignments of consumer loans (including small loans



that are subject to IC 24-4.5-7) that are not mortgage transactions;  
and

(b) undertaking the direct collection of payments from or the enforcement of rights against debtors arising from consumer loans (including small loans that are subject to IC 24-4.5-7) that are not mortgage transactions;

in Indiana without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this chapter in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not small loans (as defined in IC 24-4.5-7-104) or mortgage transactions:

- (a) The making of consumer loans.
- (b) Taking assignments of consumer loans.
- (c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from consumer loans.

(4) A separate license under this chapter is required for each legal entity that engages in Indiana in any activity described in subsection (3). However, a separate license under this chapter is not required for each branch of a legal entity licensed under this chapter to perform an activity described in subsection (3).

(5) Except as otherwise provided in subsections (1) and (2), a separate license under IC 24-4.5-7 is required in order to regularly engage in Indiana in the following actions with respect to small loans (as defined in IC 24-4.5-7-104):

- (a) The making of small loans (as defined in IC 24-4.5-7-104).
- (b) Taking assignments of small loans (as defined in IC 24-4.5-7-104).
- (c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from small loans (as defined in IC 24-4.5-7-104).

A person that seeks licensure under IC 24-4.5-7 in order to regularly engage in Indiana in the actions set forth in this subsection shall apply to the department for that license in the form and manner prescribed by the department, and is subject to the same licensure requirements and procedures as an applicant for a license to make consumer loans (other than small loans or mortgage transactions) under this section.

**(6) The following apply with respect to a CPAP transaction that is offered or entered into after June 30, 2016:**

- (a) Subject to subdivision (b), a CPAP contract must be in a form and made in a manner approved by the department.**



**(b) If the consumer claimant is represented by an attorney in the civil proceeding on which a CPAP transaction is based, the CPAP contract must contain a written acknowledgment by the attorney that attests to the following:**

- (i) That to the best of the attorney's knowledge, all costs and charges relating to the CPAP transaction have been disclosed to the consumer claimant.**
- (ii) That the attorney is being paid by the consumer claimant on a contingency basis under a written fee agreement.**
- (iii) That all proceeds of the civil proceeding will be disbursed through a trust account of the attorney, or through a settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant.**
- (iv) That the attorney is following the instructions of the consumer claimant with respect to the CPAP transaction.**
- (v) That the attorney has not received a referral fee or other consideration from the CPAP provider, and agrees not to receive a referral fee or other consideration from the CPAP provider at any time, in connection with the CPAP transaction.**

**If the attorney retained by the consumer claimant in the consumer claimant's civil proceeding does not complete the acknowledgment required by this subdivision, the CPAP contract, and the CPAP transaction to which it pertains, are void. However, the CPAP contract, and the CPAP transaction to which it pertains, remain valid and enforceable if the consumer claimant or the attorney terminates the representation.**

SECTION 7. IC 24-4.5-3-511, AS AMENDED BY P.L.186-2015, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 511. Regular Schedule of Payments; Maximum Loan Term — **(1) This section does not apply to a CPAP transaction.**

**(2) Supervised loans not made pursuant to a revolving loan account and in which the principal is four thousand dollars (\$4,000) or less are payable in a single instalment or shall be scheduled to be payable in substantially equal instalments that are payable at equal periodic intervals, except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and:**

- (a) over a period of not more than thirty-seven (37) months if the**



principal is more than three hundred dollars (\$300); or  
 (b) over a period of not more than twenty-five (25) months if the  
 principal is three hundred dollars (\$300) or less.

~~(2)~~ **(3)** The amounts of three hundred dollars (\$300) and four  
 thousand dollars (\$4,000) in subsection ~~(1)~~ **(2)** are subject to change  
 pursuant to the provisions on adjustment of dollar amounts  
 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the  
 Reference Base Index to be used with respect to the amount of:

~~(1)~~ **(a)** three hundred dollars (\$300) is the Index for October  
 1992; and

~~(2)~~ **(b)** four thousand dollars (\$4,000) is the Index for October  
 2012."

Delete pages 4 through 25.

Page 26, delete lines 1 through 26.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1127 as introduced.)

HEATON

Committee Vote: yeas 11, nays 1.

